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In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, *Appellant*

v.

GEORGE DONALD SHIREY

Appeal from the United States District Court for the Middle District of Pennsylvania

---

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

OPINION BELOW

The memorandum opinion of the District Court is set forth in the Appendix, *infra*, pp. 1a-6a. It is not reported.

JURISDICTION

The order of the District Court dismissing the information as to appellee, on the ground that the facts alleged did not constitute an offense under 18 U.S.C. 214, was entered on March 17, 1958 (Appendix, *infra*, p. 6a). Notice of appeal to this Court was filed in the District Court on April 14, 1958. The jurisdiction of this Court to review on direct appeal a judgment

dismissing an information, based on a construction of the statute on which the information is founded, is conferred by 18 U.S.C. 3731.

STATUTE INVOLVED

18 U.S.C. 214:

> Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

QUESTION PRESENTED

Whether 18 U.S.C. 214 proscribes an offer or promise to a congressman to make a payment to a political party, in return for the use of influence to procure an appointment to a federal position.

STATEMENT

The information charged that appellee, in violation of 18 U.S.C. 214, on or about December 5, 1953, did wilfully "offer or promise to S. Walter Stauffer, a Member of Congress of the 19th Congressional District of Pennsylvania, to donate $1,000 a year to the Republican Party to be used as they see fit, in consideration of the use or the promise to use any influence to procure for him the appointive office, under the United States, of Postmaster of York, Pennsylvania." The District Court dismissed the information as not stating facts sufficient to constitute an offense under 18 U.S.C. 214, *supra*.

The court, noting that the statute prohibits an offer of money or thing of value "to any person, firm, or

corporation", held that the Republican Party is not a "person, firm, or corporation". It also noted that, whereas Section 214 does not mention political contributions, the counterpart section (now 18 U.S.C. 215) does prohibit solicitation or receipt "either as a political contribution, or for personal emolument, any money or thing of value" in consideration of the promise to use influence.

THE QUESTION IS SUBSTANTIAL

The holding of the court below that present federal statutes do not prohibit a person from endeavoring to obtain influence to secure an appointive office by offering to make contributions to a political party presents a question of public importance, warranting review by this Court. We believe that the decision below is incorrect and contrary to the intent of Congress.

1. To the extent that the opinion holds that the indictment did not charge an offer to any "person, firm, or corporation", it is manifestly in error. The information charges that appellee offered or promised to *Congressman Stauffer* donations of $1,000 per year to the Republican Party. The question is thus whether the offer to a person to give money to his political party is an offer of *"a thing of value"* to that person. In our view, the contribution would clearly be a "thing of value", under the statute, not merely to the Party, but to a congressman, in heightening the congressman's prestige as a source of contributions, as well as in obtaining funds a part of which might be available for a future personal campaign of the congressman. The importance of party funds to a person seeking office as a representative of that party hardly needs elaboration.

Moreover, even if the statute is read as prohibiting only an offer to give *money* to any "person, firm, or corporation"—here, the offer to give money to the Republican Party—the status of a political party as a "person, firm, or corporation" seems clear. At the time Sections 214 and 215 were enacted as Sections 1 and 2 of the Act of December 11, 1926, Section 1 of the Revised Statutes provided:

> In determining the meaning of any Act or resolution of Congress, passed subsequent to February 25, 1871, words importing the singular number may extend and be applied to several persons or things; * * * the word "person" may extend and be applied to partnerships and corporations, * * * unless the context shows that such words were intended to be used in a more limited sense; * * *.

Title 1, U.S.C., was enacted into positive law in 1947, a year before Title 18 was similarly enacted, Section 1 of Title 1 carried forward the provision that "words importing the singular include and apply to several persons, parties, or things", and added the provision that "the words 'person' and 'whoever' include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals," "unless the context indicates otherwise." In view of the definition in the Revised Statutes, Section 1 of Title 1 of the United States Code, and the legislative history of the Act of December 11, 1926 (which first enacted the provision which is now Section 214), a reasonable interpretation of the word "person" in the phrase "any person, firm, or corporation" is that it includes persons associated together, *e.g.*, a political party. This becomes clear under the definition in 1 U.S.C. 1, which specifically includes "associations."

The District Court itself defined a political party as "a body of persons *associated* for the purpose of promoting certain views, opinions, or principles with respect to government" (emphasis added) (Appendix, *infra*, p. 5a).

2. The District Court also relied on the fact that the section here involved, 18 U.S.C. 214, was originally enacted as part of a statute (44 Stat. 918) which read as follows:

> * * * That it shall be unlawful to pay or offer or promise to pay any sum of money, or any other thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence, whatsoever, to procure any appointive office under the Government of the United States for any person whatsoever.
>
> Sec. 2. It shall be unlawful to solicit or receive from anyone whatsover, either as a political contribution, or for personal emolument, any sum of money or thing of value, whatsoever, in consideration of the promise of support, or use of influence, or for the support or influence of the payee, in behalf of the person paying the money, or any other person, in obtaining any appointive office under the Government of the United States.

The court assumed that the inclusion of the term "political contribution" in Section 2 (dealing with *solicitations*) tended to negate an intention to include *offers* of such contributions in Section 1. But there is a difference between the situation of the offeror and of the solicitor which made advisable the spelling out of the intention in the case of the solicitor, and not of the offeror. An offeror seeking to *purchase* a position would always be acting for a specific personal motive and could not claim that what he was doing

was for some general public good. On the other hand, the solicitor of funds could be in a position to claim that he was not seeking money for himself, but merely engaging in general political activity. Indeed, the legislative history of the statute shows that Congress was directing its attention to the promise of federal office, particularly post office positions, in return for contributions to the party (65 Cong. Rec. 1409-1412). Congressman Stevenson had reported of one solicitor (65 Cong. Rec. 820), "Oh, he said he was collecting this money for a campaign fund." It is therefore understandable that Congress found it appropriate to spell out specifically, as to solicitors, that it was prohibiting solicitation "either as a political contribution, or for personal emolument." But nothing in the history indicates that the precaution of specifically including a political contribution as a "thing of value" to a solicitor or recipient was to be applied in a different section as a limitation, rather than clarification, of the otherwise inclusive scope of the term "thing of value" with respect to an offeror. To the contrary, in the congressional discussions in the years preceding the enactment of the instant legislation, while references to solicitations of pay for offices were naturally in numerical preponderance, it was noteworthy that Congressman Wurzbach spoke not alone of the solicitors of campaign contributions but also of those who made the contributions (67 Cong. Rec. 4942): "Many were 'called' to contribute, and many did contribute with the inspired hope that they would be among the 'chosen elect'." Moreover, the purpose of the instant enactment was stated in broad terms in the House committee report (H. Rep. No. 1366, 69th Cong., 1st Sess., June 3, 1926):

> This bill seeks to punish the purchase and sale of public offices. Certain Members of Congress have brought to the attention of the House both by speeches on the floor and statements before the Judiciary Committee a grave situation, disclosing corruption in connection with postal appointments in Mississippi and South Carolina. It is believed that this bill will prevent corrupt practices in connection with patronage appointments in the future.

This Court recently stated, in rejecting a narrow construction of the statute designed to exclude from the offense of solicitation the case of jobs not yet established (*United States* v. *Hood*, 343 U.S. 148, 150-151):

> The evil at which the statute is directed is the operation of purchased, and thus improper, influence in determining the occupants of federal office. * * * Nothing has been suggested, either by the sparse legislative history or by prior judicial construction, to restrain us from giving effect to the obvious, ordinary reading of the statute. It is pressed upon us that criminal statutes are to be strictly construed. But this does not mean that such legislation "must be construed by some artifical and conventional rule." *United States* v. *Union Supply Co.*, 215 U.S. 50, 55. We should not read such laws so as to put in what is not readily found there. But equally we should not read out what as a matter of ordinary English speech is in.

That same rationale applies here.[1]

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[1] The language of recent congressional reports and of administrators further attests the meaning of the language concerning political contributions as being merely explanatory of "things of value" rather than in limitation of it. Thus, when Congress, in 1951, amended Section 2 (concerning solicitation and receipt

CONCLUSION

It is respectfully submitted that the Court should note jurisdiction of this appeal.

J. LEE RANKIN,
Solicitor General.

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Assistant Attorney General.

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J. F. BISHOP,
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MAY 1958.

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of bribes) to prohibit obtaining of fees by employment agencies (65 Stat. 320), the committee reports, in describing the section, did not separately mention political contributions as something to be distinguished from a thing of value, but described the law as follows: "Under existing law it is a criminal offense for anyone to solicit or receive any money or thing of value * * *" (S. Rep. No. 3, 82d Cong., 1st Sess., p. 1; H. Rep. No. 784, 82d Cong., 1st Sess., p. 2). In 1946, 1947, and 1949, with respect to a similar proposed amendment, similar language appeared (S. Rep. No. 1036, 79th Cong., 2d Sess., March 12, 1946; S. Rep. No. 2, 80th Cong., 1st Sess., January 15, 1947; S. Rep. No. 7, 81st Cong., 1st Sess., January 24, 1949). The same treatment of the political contribution language appeared in the speech of Senator McCarran, of the Senate Judiciary Committee, in introducing the 1951 amendment on the floor of the Senate (97 Cong. Rec. 10682), in the letter of the President of the Civil Service Commission to the Senate, dated December 14, 1945 (reproduced in Senate Report, No. 3, *supra*), and in the letter of the Executive Director of the Civil Service Commission to the House Judiciary Committee, dated February 20, 1951 (reproduced in H. Rep. No. 784, *supra*). And see the even broader summary, "pay or offer or promise to pay for the use of influence", in the letter of the Attorney General to the Senate, dated February 19, 1946, in S. Rep. No. 3, *supra*.

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

* * * * *

No. 12527 CRIMINAL

UNITED STATES OF AMERICA

v.

GEORGE DONALD SHIREY

Memorandum

This is a motion to dismiss the Information because the Information does not state facts sufficient to constitute an offense against the United States of America. The Information charges that:

> "On or about the 5th day of December 1953, in the City of York, Middle District of Pennsylvania, and within the jurisdiction of this Court, GEORGE DONALD SHIREY, in violation of the Act of Congress, June 25, 1948, c. 645, Sec. 1, 62 Stat. 694, 18 U.S.C. Sec. 214, did KNOWINGLY, WILFULLY and UNLAWFULLY offer or promise to S. WALTER STAUFFER, a Member of Congress of the 19th Congressional District of Pennsylvania, to donate $1,000 a year to the Republican Party to be used as they see fit, in consideration of the use or the promise to use any influence to procure for him the appointive office, under the United States, of Postmaster of York, Pennsylvania."

As above indicated, this Information was brought under 18 U.S.C. § 214 which reads as follows:

> "Offer to procure appointive public office
>
> "Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall

be fined not more than $1,000 or imprisoned not more than one year, or both."

The counterpart to this statute appears in the next section of the Code (18 U.S.C. § 215) and reads as follows:

"Acceptance or solicitation to obtain appointive public office.

"Whoever solicits or receives, either as political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

No case construing Section 214 has been brought to our attention, nor has our independent search disclosed any.

In United States v. Hood et al., 343 U.S. 148 (1952), appellees were indicted for violating 18 U.S.C. § 215, which, as above indicated, makes it a misdemeanor for anyone to solicit or receive contributions in consideration of the promise of support or use of influence in obtaining for any person "any appointive office or place under the United States." The trial court dismissed certain counts of the indictment which alleged the solicitation of contributions in return for promises to use influence to obtain offices which were not in existence at the time of the solicitation or the return of the indictment but which the President had been authorized to create under the Defense Production Act of 1950. The order of dismissal was appealed by the Government direct to the Supreme Court under the Criminal Appeals Act, 18 U.S.C. (Supp. IV) §3731. The Supreme Court in reversing stated. inter alia:

"We think the District Court was wrong. The statute is plainly broad enough on its face to cover

the sale of influence in connection with an office which had been authorized by law and which, at the time of the sale, might reasonably be expected to be established. That was the situation here and we do not have to go further to say whether the words will cover the sale of an office which is purely the creature of the seller's fancy.

"The evil at which the statute is directed is the operation of purchased, and thus improper, influence in determining the occupants of federal office. But in attacking that evil, Congress outlawed not the use of such influence, but the solicitation of its purchase, the peddling of the forbidden wares. As is not uncommon in criminal legislation, Congress, in order to strike at the root, made the scope of the statute wider then the immediate evil. Even judges need not be blind to the fact of political life that it helps in influencing political appointments to be forehanded with a recommendation before an office is formally created. Certainly it was not unreal for Congress to believe that the sale of influence in anticipation of jobs was equally damaging to the proper operation of the federal service and to take steps to prevent it. It did so in this Act. Nothing has been suggested, either by the sparse legislative history or by prior judicial construction, to restrain us from giving effect to the obvious, ordinary reading of the statute. It is pressed upon us that criminal statutes are to be strictly construed. But this does not mean that such legislation 'must be construed by some artificial and conventional rule.' *United States* v. *Union Supply Co.*, 215 U.S. 50, 55. We should not read such laws so as to put in what is not readily found there. But equally we should not read out what as a matter of ordinary English speech is in.

"This Act penalized corruption. It is no less corrupt to sell an office one may never be able to

deliver than to sell one he can. Dealing in futures also discredits the processes of government. There is no indication that this statute punishes delivery of the fruit of the forbidden transaction—it forbids the sale. The sale is what is here alleged. Whether the corrupt transaction would or could ever be performed is immaterial. We find no basis for allowing a breach of warranty to be a defense to corruption."

In the instant case we are not dealing in a sale, rather an attempted purchase.

Sections 214 and 215, supra, first appear, substantially in pari materia, as a single act, approved December 11, 1926, 44 Stat. 918, H. R. 10739, Public, No. 525, as follows:

"An Act To prevent purchase and sale of public office.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it shall be unlawful to pay or offer or promise to pay any sum of money, or any other thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence, whatsoever, to procure any appointive office under the Government of the United States for any person whatsoever.

"SEC. 2. It shall be unlawful to solicit or receive from anyone whatsoever, either as a political contribution, or for personal emolument, any sum of money or thing of value, whatsoever, in consideration of the promise of support, or use of influence, or for the support or influence of the payee, in behalf of the person paying the money, or any other person, in obtaining any appointive office under the Government of the United States.

"SEC. 3. Anyone convicted of violating this Act shall be punished by imprisonment of not more

than one year, or by a fine of not more than $1,000. or by both such fine and imprisonment.

"SEC. 4. All Acts and parts of Acts inconsistent herewith are hereby repealed."

This is a criminal statute and with the reservations made in United States v. Hood, supra, must be strictly construed. United States v. Five Gambling Devices, 7 Cir., Slip Opinion February 18, 1953. The construction of a statute should be with reference both to the history of the legislation and to other sections of the law with which it is in pari materia. Gutschalk v. Peck, D.C.N.D. Ohio, 1919, 261 Fed. 212.

As above indicated, Sections 214 and 215 first appeared in 1926 as a single act. The soliciting section (215) specifically mentions "political contribution." No such characterization is found in Section 214 under which this Information is drawn. The Information here alleges that the defendant offered or promised to donate $1,000. a year to the Republican Party. The section in question specifically limits the payee to "any person, firm or corporation." A political party has been defined as a body of persons associated for the purpose of promoting certain views, opinions, or principles with respect to government. 29 C.J.S. Political Parties § 84. It is in no sense of the word a person, a firm, or a corporation. Had the Congress so desired, or intended, it could have added to the words "person, firm or corporation" the further words "or political party."

Having in mind the obvious evil at which both Section 214 and Section 215 are directed, namely, the traffic in federal offices, it is interesting to note that only in § 215 (solicitation) was Congress concerned about a political contribution. The two sections have stood with no substantial change for nearly thirty-two years. It is not, in my judgment, the province of the courts to attempt to rationalize this apparent deliberate omission.

In the instant case the Information does not charge that the offer was to contribute to the individual named therein, a Congressman; the offer was made to the individual to contribute to the Republican Party. Considering Sections 214 and 215 as a whole, and having in mind the rules or construction above referred to, particularly in the light of the Hood case, supra, it is my conclusion that the Information does not state facts sufficient to constitute an offense against the United States of America.

Motion to dismiss the Information will be granted.

(s) FREDERICK V. FOLLMER
United States District Judge

March 17, 1958

Order

NOW, to wit, March 17, 1958, in accordance with Memorandum this day filed, It is Ordered and Decreed that defendant's motion to dismiss the Information be and the same is hereby granted.

(s) FREDERICK V. FOLLMER
United States District Judge

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